

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-50355; File No. SR-Amex-2004-23)**

**September 13, 2004**

**Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Generic Listing Standards for Trust Certificate Securities Linked to a Portfolio of Investment Grade Securities**

**I. Introduction**

On April 19, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide generic listing standards for qualified trust certificate securities (“Trust Securities”) pursuant to Rule 19b-4(e) under the Act. On May 12, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, as amended, was published for comment in the Federal Register on June 17, 2004.<sup>4</sup> The Commission received no comments regarding the proposal. On August 31, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> On September 9, 2004, the Exchange filed

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 12, 2004. In Amendment No. 1, Amex made technical changes to its proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 49840 (June 9, 2004), 69 FR 33958.

<sup>5</sup> See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 30, 2004. In Amendment No. 2, Amex removed the words “at the end of the term” from Section 107E(a)(vii).

Amendment No. 3 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as amended.

## II. Description

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>7</sup> The Amex is now proposing to amend Section 107 to add Section 107E to provide additional criteria for certain trust certificate securities that serve as pass-through vehicles for a portfolio of investment-grade fixed income and/or floating rate securities.<sup>8</sup>

Below is the text of the proposed rule change. Proposed new language is italicized.

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### Section 107. Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading.

Such issues will be evaluated for listing against the following criteria:

#### A – C. No Change

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<sup>6</sup> See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 9, 2004. In Amendment No. 3, Amex added the words “including pursuant to unlisted trading privileges” to Section 107E(a).

<sup>7</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990); 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>8</sup> “Investment grade” is a current rating that is no lower than an S&P Corporation “B” rating or equivalent rating by another nationally recognized securities rating organization (“NRSRO”).

D. Reserved

E. Trust Certificate Securities

(a) Initial Listing. Trust certificate securities representing an ownership interest in a special purpose trust created pursuant to a trust agreement, the assets of which consists primarily of a basket or portfolio of up to thirty (30) investment-grade fixed income or floating rate securities will be considered for listing and trading, including pursuant to unlisted trading privileges, on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

- i. The trust certificates meet the requirements under the Securities Act of 1933 in connection with asset-backed securities.
- ii. The underlying portfolio securities consist solely of investment-grade corporate debt or debentures (the “Underlying Bonds”), U.S. Department of the Treasury securities (“Treasury Securities”) and government-sponsored entity securities (the “GSE Securities”).
- iii. Each issuer of an Underlying Bond and GSE Security meets the criteria set forth above in Section 107A(a) under “General Criteria.”
- iv. The trust meets the criteria set forth above in Section 107A under “General Criteria,” except for the asset/equity tests of Section 107A(a).
- v. Each Underlying Security will meet the Exchange’s Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide and be rated by a nationally recognized securities rating organization (an “NRSRO”) that is no lower than an S&P Corporation “B” rating or equivalent rating by another NRSRO.

- vi. Up to 15% of the underlying component securities at issuance may consist of Treasury Securities and GSE Securities.
- vii. The trust certificates will provide for the repayment of the original principal investment amount.
- viii. The trust certificates will provide for the pass-through of periodic payments of interest and principal of the underlying securities.
- iv. The trust certificates have a minimum term of five years.
- x. At least 75% of the component securities of the underlying portfolio must be from issuances of \$100 million or more.

Prior to commencement of the trading of trust certificate securities admitted to listing under this section, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

(b) Continued Listing. Trust certificate securities listed and traded under this section will be subject to the continued listing guidelines for bonds set forth in Section 1003(b)(iv). Under Section 1003(b)(iv), the Exchange will normally consider suspending or delisting a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000 or the issuer is not able to meet its obligations on the listed securities.

(c) Trust certificate securities traded in thousand dollar denominations or multiples thereof will be treated as a debt instrument and will be subject to the debt trading rules of the Exchange. Trust certificate securities traded in other than thousand dollar denominations or multiples thereof will be treated as an equity instrument and subject to the equity trading rules of the Exchange.

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The Exchange's proposal to add new Section 107E to the Amex Company Guide is to provide generic listing standards to permit the listing and trading of qualified Trust Securities pursuant to Rule 19b-4(e) under the Act.<sup>9</sup>

A. Generic Listing Standards

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.<sup>10</sup> Hence, Amex is proposing generic listing standards in Section 107E of the Amex Guide, for this product class, under which it will be able to list and trade (including pursuant to unlisted trading privileges) Trust Securities without individual Commission approval of each product as a proposed rule change. Instead, Amex is proposing that within five (5) business days after commencement of trading the new derivative products that satisfy the requirements of Section 107E of the Amex Guide, Amex will file a Form 19b-4(e).<sup>11</sup> Amex represents that any securities it lists and/or trades pursuant to Section 107E will satisfy the standards set forth in Section 107E of the Amex Company Guide.

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<sup>9</sup> 17 CFR 19b-4(e). See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998)(“New Product Release”).

<sup>10</sup> See New Product Release.

<sup>11</sup> 17 CFR 249.820.

In addition, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Trust Securities.

In its filing the Exchange represented that adopting generic listing standards for Trust Securities should fulfill the objective of Rule 19b-4(e) by allowing those Trust Securities that satisfy the proposed generic listing standards to start trading, without the need for public notice and comment and Commission approval, thus potentially reducing the time frame for bringing Trust Securities to market and thereby reducing the burdens on issuers, other market participants and the Commission staff.

#### B. Trust Securities

Trust Securities represent an ownership interest in a special purpose trust created pursuant to a Trust.<sup>12</sup> The assets of such Trust may consist of a basket or portfolio of up to thirty (30) investment-grade corporate securities (“Underlying Bonds”), securities issued by the United States Department of the Treasury (“Treasury Securities”), and/or government-sponsored entity securities (“GSE Securities”). The issuance of Trust Securities will generally consist of a repackaging of the Underlying Corporate Bonds. Other qualifying securities of the underlying portfolio may also consist of Treasury Securities and/or GSE Securities;<sup>13</sup> however, such securities will be limited to up to 15% of the underlying portfolio at the time of issuance.

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<sup>12</sup> A qualified Trust Security is required to meet the requirements for asset-backed securities as set forth in the Securities Act of 1933 (“Securities Act”).

<sup>13</sup> A GSE Security is a security that is issued by a government-sponsored entity such as Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), Student Loan Marketing Association (“Sallie Mae”), the Federal Home Loan Banks and the Federal Farm Credit Banks. All GSE debt is sponsored but not guaranteed by the federal government, whereas government agencies such as Government National Mortgage Association (“Ginnie Mae”) are divisions of the U.S. government whose securities are backed by the full faith and credit of the U.S. government.

The Trust is required to make distributions to holders of Trust Securities depending on the amount of distributions received by such Trust on the Underlying Securities. The principal amount invested is protected as the investor will receive back the initial amount he invested.

Due to the pass-through and passive nature of the Trust Securities, the Exchange will rely on the assets and stockholder equity of the issuers of the Underlying Bonds and GSE Securities to meet the requirement in Section 107A(a) of the Company Guide. For purposes of including Treasury Securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A(a). The distribution and aggregate principal amount/aggregate market value standards found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Trust Securities.

Therefore, the listing guidelines provide that the issuer of the Underlying Bonds and GSE Securities have assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer of the Underlying Bonds and GSE Securities which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

These initial listing standards for the Trust Securities require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then the minimum public distribution requirement of 400 holders does not apply.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the Trust Securities. Each of the Underlying Securities will generally provide for the payment of interest which may be on a different schedule than the distributions of interest by the Trust Securities. To alleviate potential cash flow timing issues that may exist, the Trust may enter into an interest distribution agreement.<sup>14</sup> Principal distributions on the Trust Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities. However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (e.g., upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the Trust Securities. Each Underlying Bond is expected to be issued by a corporate issuer and either purchased at the time of the initial issuance or in the secondary market. However, with respect to Treasury Securities and/or GSE Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of Trust Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the Trust Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent received from the Underlying Securities. Distributions of interest may be made monthly, quarterly or semi-annually. Investors will also be entitled to be repaid the

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<sup>14</sup> In this manner, any shortfall in the amounts available to pay interest to holders of the Trust Securities due to varying interest payment schedules will be made to such Trust by a third party (typically a bank) and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

principal of their Trust Securities from the proceeds of the principal payments on the Underlying Securities.<sup>15</sup> The payout or return to investors on the Trust Securities will not be leveraged.

The Trust Securities will mature on the latest maturity date of the Underlying Securities. Holders of the Trust Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Bond; however, holders of the Trust Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities. The Exchange currently lists and trades several Trust Securities under the names of “Select Notes” and “TRACERS.”<sup>16</sup>

In addition, the Underlying Securities must meet the Exchange’s Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide. The Exchange’s Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least \$5 million and any of: (1) the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange, Inc. (“NYSE”)) or on the

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<sup>15</sup> The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. The Prospectus for each Trust Security transaction will provide a schedule of the distribution of interest and of the principal upon maturity for each Underlying Security. In addition, such Prospectus will also disclose a description of payment default and acceleration of the maturity date.

<sup>16</sup> See Securities Exchange Act Release Nos. 49315 (February 24, 2004) 69 FR 9882 (March 2, 2004) (File No. SR-Amex-2004-08); 49136 (January 28, 2004) 69 FR 6345 (February 10, 2004) (File No. SR-Amex-2003-99); 48791 (November 17, 2003) 68 FR 65750 (November 21, 2003) (File No. SR-Amex-2003-92); 47730 (April 24, 2003) 68 FR 23340 (May 1, 2003) (File No. SR-Amex-2003-25); 47884 (May 16, 2003) 68 FR 28305 (May 23, 2003) (File No. SR-Amex-2003-37); 48312 (August 8, 2003) 68 FR 48970 (August 15, 2003) (File No. SR-Amex-2003-69); 46835 (November 14, 2002) 67 FR 70271 (November 21, 2002) (File No. SR-Amex-2002-70); and 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. SR-Amex-2002-92). In some cases, the Trust Securities are also generically known as “ABS Securities.”

Nasdaq National Market); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market ) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an Standard & Poor's Corporation ("S&P") "B" rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P "B" rating or an equivalent rating by another NRSRO to a pari passu or junior issue.<sup>17</sup>

In addition to the Exchange's Bond and Debenture Listing Standards, the Amex proposes that each Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket or portfolio contain Underlying Securities from issuances of \$100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the Trust Securities with the maturity date of the Trust Securities being the latest maturity date of the Underlying Securities. Amortization of the Trust Securities will be based on (1) the respective maturities of the Underlying Securities; (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities; and (3) any early redemption or liquidation of the Underlying Securities. Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the

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<sup>17</sup> This final provision of Section 104 would not apply because the Underlying Bonds and GSE Securities must have an investment grade rating. Telephone conference between Jeffrey Burns, Associate General Counsel, and Florence Harmon, Senior Special Counsel, on September 10, 2004.

broker-dealer through whom the investor purchased the Trust Securities. In addition, the Bond Market Association provides links to price and other bond information sources on its investor web site at <http://www.investingbonds.com>. Transaction prices and volume data for the most actively-traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. (“NASD”) Trade Reporting and Compliance Engine (“TRACE”) will also aid investors in obtaining transaction information for most corporate debt securities, such as investment grade corporate bonds.<sup>18</sup> For a fee, investors can have access to intra-day bellwether quotes.<sup>19</sup>

Price and transaction information for Treasury Securities and GSE Securities may also be obtained at <http://www.publicdebt.treas.gov> and <http://www.govpx.com>, respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices<sup>20</sup> and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Trust Securities will conform to the Exchange’s continued listing guidelines, which are set forth in Sections 1001 through 1003 of Part 10 to the Exchange’s Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from

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<sup>18</sup> See Securities Exchange Act Release No. 43873 (January 23, 2001) 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at <http://www.nasdbondinfo.com/>.

<sup>19</sup> Corporate prices are available at 20-minute intervals from Capital Management Services at <http://www.bondvu.com>.

<sup>20</sup> “Valuation Prices” refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond’s value.

listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Trust Securities, the Exchange will rely on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000 or the issuer is not able to meet its obligations on the listed debt securities, including repayment of the original principal investment.

The Trust Securities generally will be listed in \$1,000 denominations (or multiples thereof) with the Exchange's existing debt floor trading rules applying to trading. However, Trust Securities may be listed in face amounts in other than \$1,000 denominations (or multiples thereof) whereby the Exchange's existing equity floor trading rules would apply. The Trust Securities will also be subject to the debt margin rules of the Exchange.<sup>21</sup> In all cases, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Trust Securities.<sup>22</sup> With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Trust Securities: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

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<sup>21</sup> See Amex Rule 462.

<sup>22</sup> Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Trust Securities. In addition, the Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees. Prior to commencement of the trading, the generic listing standards also require the Exchange to evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in such securities and highlighting the special risks and characteristics of the Trust Securities.

### **III. Discussion**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.<sup>23</sup> The Commission finds that this proposal is similar to several approved Trust Securities products currently listed and traded on the Amex.<sup>24</sup> Accordingly, the Commission finds that the listing and trading of the Trust Securities under the generic listing standards set forth in Section 107E of the Amex Company Guide is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section

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<sup>23</sup>

Id.

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See supra note 16.

6(b)(5) of the Act.<sup>25</sup>

As described more fully above, the Trust Securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities and/or GSE Securities, subject to certain distribution of interest obligations of the Trust. The Treasury Securities and/or GSE Securities are limited to up to 15% of the underlying portfolio at the time of issuance. The Trust Securities are not leveraged instruments. The Trust Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Securities. Each of the Underlying Securities will generally provide for the payment of interest which may be on a different schedule than the distributions of interest by the Trust Securities. To alleviate potential cash flow timing issues that may exist, the Trust may enter into an interest distribution agreement described in Part II of this Order. In addition, the Trust Securities will mature on the latest maturity date of the Underlying Securities. However, due to the pass-through nature of the Trust Securities, the level of risk involved in the purchase or sale of the Trust Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Trust Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the Trust Securities. In addition, the Exchange's listing standards further provide that there is no minimum holder

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<sup>25</sup> 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

requirement if the securities are traded in thousand dollar denominations.<sup>26</sup> The Commission notes that the Exchange has represented that Trust Securities traded in thousand dollar denominations or multiples thereof will be treated as a debt instrument and will be subject to the debt trading rules of the Exchange; trust certificate securities traded in other than thousand dollar denominations or multiples thereof will be treated as an equity instrument and subject to the equity trading rules of the Exchange. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.<sup>27</sup>

Due to the pass-through and passive nature of the Trust Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Trust Securities. Thus, the generic listing standards in Section 107E for Trust Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001-1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the Underlying Securities of the Trust Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the Trust Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring that issuers of

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<sup>26</sup> See Company Guide Section 107A.

<sup>27</sup> A qualified Trust Security is required to meet the requirements for asset-backed securities as set forth in the Securities Act.

the Underlying Securities meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the United States Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of \$100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market vendors such as Bloomberg, or through websites such as <http://www.investinginbonds.com> (for Underlying Corporate Bonds) and <http://publicdebt.treas.gov> and <http://www.govpx.com> (for Treasury Securities and GSE Securities, respectively). The National Association of Securities Dealers, Inc. ("NASD") Trade Reporting and Compliance Engine ("TRACE") will also aid investors in obtaining transaction information for most corporate debt securities, such as investment grade corporate bonds.<sup>28</sup>

Finally, the Commission believes that, by adopting generic listing standards for Trust Securities, this proposal should fulfill the intended objective of Rule 19b-4(e) by allowing Trust Securities that satisfy the proposed generic listing standards to start trading, without the need for

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<sup>28</sup> See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at <http://www.nasdbondinfo.com/>.

public notice and comment and Commission approval, because the Exchange's generic listing standards address the listing, trading, surveillance issues for this product class. The Commission believes that these generic listing standards have the potential to reduce the time frame for bringing Trust Securities to market, thus reducing the burdens of issuers, other market participants, and the Commission.

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 2 deletes the words "at the end of the term" from Section 107E(a)(vii), thus clarifying that Trust Securities may return to the investor the original principal amount of his/her investment at any time during the life of the Trust Security, not merely at the end of the term. Amendment No. 3 adds the words "including pursuant to unlisted trading privileges" to Section 107E(a). This Amendment is designed to protect investors and the Amex by highlighting the need for other self-regulatory organizations to have Commission-approved generic listing standards in place before trading the Trust Securities pursuant to unlisted trading privileges.<sup>29</sup> The Commission believes that the Trust Securities will provide investors with an additional investment choice and that accelerated approval of these amendments will allow investors to begin trading the Trust Securities promptly. Additionally, the Trust Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act<sup>30</sup> to approve Amendment Nos. 2 and 3.

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<sup>29</sup> See New Product Release.

<sup>30</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether the proposed amendments are consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-23 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

**V. Conclusion**

IS IT THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-Amex-2004-23) and Amendment No. 1 thereto, are hereby approved, and Amendment Nos. 2 and 3 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>31</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).